

Objection Deadline: February 28, 2023
Confirmation Hearing: March 7, 2023

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY CONNELL FOLEY LLP Philip W. Allogrimento III 56 Livingston Avenue Roseland, New Jersey 07068 Telephone: (973) 535-0500 Facsimile: (973) 535-9217 pallogrimento@connellfoley.com <i>Counsel to County of Essex</i>	
In re: Assuncao Bros. Inc., Debtor.	Bankr. Case No.: 22-16159-CMG Chapter 11 (Subchapter V) Judge Christine M. Gravelle

**LIMITED OBJECTION OF COUNTY OF ESSEX TO DEBTOR'S
SUBCHAPTER V PLAN OF REORGANIZATION**

The County of Essex, New Jersey ("Essex County"), by and through its undersigned counsel, hereby objects to the confirmation of Assuncao Bros. Inc.'s ("Debtor") Subchapter V Plan of Reorganization (the "Plan") as follows:

THE OBJECTION

1. Prior to the petition date, Essex County contracted with the Debtor to perform certain construction services on two public projects located in Essex County, New Jersey (the "Essex County Bonded Projects"). To date, the Essex County Bonded Projects are not fully complete and closed out.

2. NGM Insurance Company (“NGM” or “Surety”) issued certain performance and payment bonds at the request of the Debtor for the benefit of Essex County (and others) with respect to the Essex County Bonded Projects.

3. Following the filing of the Debtor’s bankruptcy petition, NGM, the Debtor, and Essex County reached a negotiated agreement as to the treatment certain aspects of the Essex County Bonded Projects relative to this bankruptcy proceeding. This agreement ultimately took the form of a Consent Order between the Debtor and NGM that was entered by the Court on August 29, 2022 (the “Consent Order”) [Dkt. No. 95].

4. In addition to the Consent Order generally providing for the rejection of the Essex County Bonded Projects (among other bonded projects) by the Debtor, the Consent Order also provide, in pertinent part, “[U]pon rejection of the Essex County Bonded Projects, Essex County shall have relief from the automatic stay under 11 U.S.C. § 362(d) to the extent necessary to terminate its contracts, make payments to complete work remaining on its projects, make payments to discharge liens, and/or take any and all appropriate actions to complete the Bonded Contracts, including seeking the issuance of any maintenance bonds. Nothing herein shall be deemed a waiver of Essex County’s ability to seek relief pursuant to any bonds issued by NGM to Essex County on behalf of the Debtor.” Consent Order, Para. 8.

5. Since the entry of the Consent Order, Essex County has continued to seek to close out the Essex County Bonded Projects consistent with the terms of the same and relied upon the terms of the Consent Order in taking all actions relevant to these two projects.

6. A review of the Debtor’s proposed Plan, however, appears to describe the treatment of Essex County’s rights relevant to the Essex County Bonded Project in terms different than set forth in the Consent Order. Specifically, contrary to the agreed upon terms in the Consent Order,

Section 1.6(iii) of the Plan, entitled History of The Business Operations of The Debtor, states, in part, that proceeds from all of the bonded projects were either turned over or are to be paid directly to NGM.

7. Essex County maintains that this language in the Plan is not consistent with the terms of the Consent Order and could give rise to confusion with respect to payments required to be made to complete and close out the Essex County Bonded Projects or otherwise may serve to improperly modify the rights of Essex County. Essex County therefore takes the position that the terms of the Consent Order have been misrepresented in Section 1.6(iii) of the Plan and therefore modification is appropriate prior to the Court confirming the Plan.

RELIEF REQUESTED AND RESERVATION OF RIGHTS

8. Accordingly, Essex County requests that, in connection with its consideration of the Plan, that the Court add language to any Order approving the Plan to expressly provide that the terms of the Consent Order, and not the Plan, control with respect to the rights of Essex County (and NGM and the Debtor) concerning the Essex County Bonded Projects.

9. Essex County additionally reserves the right to make such other and further objections to the Plan to protect its rights relative to the Essex County Bonded Projects as it deems necessary upon review of the terms of any proposed Confirmation Order or proposed amendments to the Plan made at or prior to Plan confirmation.

Respectfully submitted,

CONNELL FOLEY LLP
Counsel to County of Essex

By: /s/ Philip W. Allogrimento III
Philip W. Allogrimento III

Date: February 28, 2023